IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 703 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

FLAIR HEALS PHARMACEUTICALS

Versus

GUJARAT STATE FINANCIAL CORPORATION

Appearance:

MR PK JANI for Petitioner

MR DG CHAUHAN for Respondent No. 1

MR HS MUNSHAW for Respondent No. 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 12/03/97

JUDGEMENT

1. The petitioner M/s Flair Heals Pharmaceuticals is a property concerned of Himanshu Mehta has filed the present petitioner. The petitioner is a young entrepreneur and in order to start the petitioner-firm, he had applied for loan from respondent No.1- Gujarat State Financial Corporation (hereinafter referred to as

" G.S.F.C. "). The respondent No.1- G.S.F.C. sanctioned loan of Rs.8 lacs by its letter dated 30th December,1991. The said amount of Rs.8 lacs was to be repaid within a period of 8 years and in 27 quarterly installments. The petitioner was also granted moratorium of 18 months. He was also advised to to secure State subsidy of Rs.1,87,000/=. The petitioner thereafter started his unit by creating mortgage in favour of G.S.F.C. By application dtd.19-5-92, he had ask G.S.F.C. to kindly grant loan of Rs.1.5 lacs. The petitioner was granted a subsidy of Rs.31,800/= under the capital Investment Subsidy Scheme 1994-95. Both subsidies were partially disbursed in November, 1994. It is the case of the petitioner that notice dated 13th April, 1994 was issued by G.S.F.C. calling upon him to pay Rs.1,39,305/=. He addressed letter dated 29-4-94 expressing therein various difficulties faced by the petitioner and to consider his case sympathetically. Thereafter, he was served with the notice dated 27th June, 1994 by the State Financial Corporation Act. By the said notice, he was called upon to pay the entire amount of Rs.8,42,173/= which were due from him on 1st June, 1994. It is his case that in the meantime on 30th April, 1994, the Officers of Food and Drugs Department, Gandhinagar had inspected his factory and had passed the order of seizure of certain finished goods which were worth Rs.3 lacs. On 9th July, 1994, he had written to the respondent No.1 about his practical difficulties and had requested to bear with him for some more time. On 29th May, 1995, i.e. 10 months after his letter of 9-7-94the possession of the factory premises of the petitioner was taken over by respondent No.1 G.S.F.C. On 23rd June, 1995, an advertisement for public auction-sale was issued for sale of the said factory. But at the time of said auction-sale as no adequate price was offered, auction-sale actually did not take place. Therefore, he applied on 26th June, 1995 for re-schedulement to pay the loan, but without considering the said application, the respondent No.1 issued a public advertisement for auction-sale of the unit of the petitioner and sought offers till September 7, 1995. The offer of respondent No.2 for Rs.2,61,000/= was accepted and he was put in possession of the said unit. It is the claim of the petitioner that the decision of respondent No.1-G.S.F.C. in putting the property of the petitioner for auction is unconstitutional, illegal and bad in law. The respondent No.1 had not followed any procedure as required by Section 29 of the Financial Corporation Act as well as the principles laid down by the Supreme Court in the case of MAHESH CHANDRA V. REGIONAL MANAGER, U.P. FINANCIAL CORPORATION AND OTHERS A.I.R. 1993, SUPREME COURT, 935.

The property is also sold for grossly inadequate amount. He therefore, seeks a Writ of mandamus for quashing and setting aside the decision of the respondent No.1 in selling his property in favour of the respondent No.2 and to direct the respondents to hand over the said property to the petitioner in terms and conditions which the court thinks just and proper.

2. The claim of the petitioner is resisted by respondent No.1-G.S.F.C. by filing its affidavit in reply. It is contended that the action taken by the respondent No.1 is within the purview of provisions of the State Financial Corporation Act, 1951 and this is not a fit case for interference of the High Court by exercising powers under Article 226 of the Constitution of India with their statutory action against the petitioner. It is contended that they had give sufficient and ample opportunities to the petitioner to come out of his financial difficulties as well as in making payment of the dues. But the same was not availed of by the petitioner. The claim of the petitioner that the action taken by them contrary to the provisions of decision of the Supreme Court in the case of MAHESH CHANDRA V. REGIONAL MANAGER, U.P.FINANCIAL CORPORATION AND OTHERS (Supra) is not correct. Thus, it is contended that the petitioner's petition be dismissed.

3. It is contended on behalf of the respondent No.2 that respondent No.2 has purchased the property in public auction-sale and the price quoted by him or offered by him is the maximum price. Though the respondent No.1 had made many attempts to get better price than what was offered by them cannot get the same. According to him, he has paid all the amount of Rs.2,61,111/= including the interest on delayed payment till 4th July, 1996. But because of the filing of the present petition by the petitioner, the respondent No.2 is not in a position to start the said factory in view of the order of status quo obtained by the petitioner in this petition. Thus, his huge amount has remained idle and he is not getting the real fruits of a valid and legal action of respondent No.1. He also contends that there are no grounds to interfere with the action taken by the respondent No.1. He, therefore, seeks the dismissal of the petitioner's petition.

4. From the pleadings of the petitioner in the petition as well as in the Civil Application filed by him subsequently bearing Civil Application No.3231 of 1996, it is quite clear that there is no dispute of the fact that the petitioner has received the loan of Rs.8 lacs

from respondent No.1-G.S.F.C. The petitioner himself has also admitted that though he got that amount as per the order dated 30th December, 1991 and though he was to repay the said amount in 27 quarterly installments starting after 1 1/2 years from the receipt of the said loan, he nowhere claims that he had made payment of a single instalment to the present respondent No.1. Admittedly the notice was issued for the first time by the respondent No.1 to pay only the amount of Rs.1,39,305/= on 13th April, 1994. It is not the claim of the petitioner that the said claim in the said notice to get the amount of Rs.1,39,305/= was unjust or improper. The petitioner has admittedly not paid a single farthing out of the said amount of Rs.1,39,305/=. From his pleadings, it would be quite clear that he had started his production prior to June, 1994 because it is his claim that in June, 1994, his sellable production worth Rs.3 lacs were seized by the Food and Drugs Department, Gandhinagar. It is also very pertinent to note that it is not his case that the said seizure effected by the officers of Food and Drugs Department was illegal or improper. It is further stated by the petitioner himself that thereafter, he was served with the notice under Section 29 of the State Financial Corporation Act, 1951 on 27th June, 1994. But after the service of the said notice dated 27th June, 1994 till 29th May, 1995, he had not paid any amount to respondent No.1-G.S.F.C. Therefore, in the circumstances, the action of respondent No.1- G.S.F.C.in taking possession of his unit on 29th May, 1995, could not be said to be illegal or improper.

5. The respondent No.1 has stated in its affidavit in reply filed through its Law Officer in para No.9 the details of the steps taken by the Corporation for recovery of loan amount and opportunities given to the petitioner. The amount of Rs.7,73,000/= was withdrawn by the petitioner on 23-12-91. The first show cause notice was served on him on 18-8-93 on the petitioner to show cause as to why the amount should not be recovered from him. But the said show cause notice was not replied by him. Therefore, waiting for about 8 months, the second notice was issued on 13-4-94 and petitioner was asked to appear for personal hearing. When the said second show cause notice was issued, the petitioner issued 4 post dated cheques of Rs.25,000/= each on 7-5-94 and as those 4 cheques were dishonored, the statutory notice under Section 29 of the State Financial Corporation Act was served on 29-6-94 and he was asked to appear for personal hearing, but he did not pay any amount and did not also turn up in the office of the respondent No.1 for personal

hearing. Then again on 24-10-94 he was called for personal hearing and for discussion on 9-11-94, but the petitioner did not turn up and he did not pay any amount, and, therefore, on 29-5-95, the Corporation exercised the powers under Section 29 of the State Financial Corporation Act to get the possession of the assets of the petitioner's unit. Therefore, on 6-7-95, the petitioner had approach and had agreed to pay Rs.1,00,000/= by demand draft of 7-7-95 and cheque of Rs.50,000/= on 10-7-95, the respondent No.1-G.S.F.C. agreed to hand over the possession of the unit to him on such payment.But he did not make any payment. Thereafter, tender notice was issued for sale and the offer of respondent No.2 for Rs.2,61,111/= was accepted by the tender committee on 8-9-95. But thereafter, as respondent No.2 had not paid the amount till 13-11-95 and as the petitioner Himanshu Mehta requested the respondent No.1 that he would make payment of Rs.50,000/= on 8-12-95 and another Rs.50,000/= on 15-12-95 and that he should be given one more opportunity to run his unit. That claim of him was accepted. He handed over both the cheques, but both the cheques were dishonored. Then again on 30-12-95 the tender committee decided to revive the offer of respondent No.2 and handed over the unit to him as petitioner had not availed of any opportunity out of the opportunities given to the petitioner. The above details given by the respondent No.1 in the affidavit in reply are not denied by the petitioner in his rejoinder. If the above details given by the respondent No.1 are taken into consideration, then it would be quite clear that the petitioner was given ample opportunities by the respondent No.1, but he fail to take advantage of any of them.

6. The learned advocate for the petitioner has cited before me the decision of Apex Court in the case of MAHESH CHANDRA V. REGIONAL MANAGER, U.P.FINANCIAL CORPORATION AND OTHERS A.I.R. 1993 SUPREME COURT, 935 and put reliance on the guidelines laid down by the Supreme Court in the said case for the recovery proceedings initiated by the State Financial Corporation in default in repayment of loan under Section 29 of the State Financial Corporation Act. Those guidelines are as under:

> The guidelines/directions which are necessary to be issued to be observed by the Corporation while exercising power under S. 29 are as under :
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> Every endeavour should be made, to make

the unit viable and be put on working condition. If it becomes unworkable :

1) Sale of a unit should always be made by public auction.

2) Valuation of a unit for purpose of determining adequacy of offer or for determining if bid offered was adequate, should always be intimated to the unit holder to enable him to file objection if any as he is vitally interested in getting the maximum price.

3) If tenders are invited then the highest price on which tender is to be accepted must be intimated to the unit holder.

4)(a) If unit holder is willing to offer the sale price, as the tenderer, then he should be offered same facility and unit should be transferred to him. And the arrears remaining thereafter should be rescheduled to be recovered in installments with interest after the payment of last instalment fixed under the agreement entered into as a result of tendered amount.

(b) If he brings third parties with higher offer it would be tested and may be accepted.

5) Sale by private negotiation should be permitted only in very large concerns where investment runs in very huge amount for which ordinary buyer may not be available or the industry itself may be of such nature that by normal buyers may not be available. But before taking such steps there should be advertisements not only in daily newspapers but business magazines and papers.

6) Request of the unit holder to release any part of the property on which the concern is not standing of which he is the owner should normally be granted on condition that sale proceeds shall be deposited in loan account.

It is necessary to mention here that in that case the trader-petitioner had taken loan from the State Financial Corporation along with two plots of land and he intended to start a business in partnership. But as there were disputes between the partners, the business of rice mill could not be started by him. But out of the loan of less then Rs.4 lacs, he had repaid Rs.65,000/= to the Corporation and he was repeatedly insisting that he should be given vacant possession of the plot in which the rice mill was not raised as he intended to sell the said plots by private negotiations and to pay all his dues towards the Corporation. But the Corporation did not agree and Corporation has put the plots for sale. Whatever price was offered in the said auction-sale was also offered by the trader, but that was not accepted. Therefore, in view of these facts, the above principles are laid down by the Hon'ble Supreme Court. In the subsequent case of U.P. FINANCIAL CORPORATION V. M/s GEM CAP (INDIA) PVT.LTD AND OTHERS. Ltd. AND OTHERS, A.I.R. 1993 SUPREME COURT, 1435 it has been held that the Financial Corporation is not like an ordinary money-lender and that it has to act fairly. The fairness required of the Corporation however cannot be carried to the extent of disabling it from recovering what is due to it. High Court cannot sit over the administrative decision of the Financial Corporation and as an Appellate Authority, by laying down the following principles :

The Corporation is not like an ordinary money-lender or a Bank which lends money. It is a lender with a purpose- the purpose being promoting the small and medium industries. At the same time, it is necessary to keep certain basic facts in view. The relationship between the Corporation and the borrower is that of creditor and debtor. The corporation is not supposed to give loans once and go out of business. It has also to recover them so that it can give fresh loans to others. The Corporation no doubt has to act within the four corners of the Act and in furtherance of the object underlying the Act. But this factor cannot be carried to the extent of obligating the Corporation to revive and resurrect every sick industry irrespective of the cost involved. Promoting industrialization at the cost of public funds does not serve the public interest; it merely amounts to transferring public money to private account. The fairness required of the Corporation cannot be carried to the extent of disabling it from recovering what is due to it.

> While not insisting upon the borrower to honour the commitments undertaken by him the Corporation along cannot be shackled hand and foot in the name of fairness. Fairness is not a one way street, more particularly in matters like the present one.

> In a matter between the Corporation and its debtor, a writ court has no say except in two situations : (1) there is a statutory violation on the part of the Corporation, or (2) where the Corporation acts unfairly i.e., unreasonably. Acting unfairly or unreasonably does not mean that the High Court exercising its jurisdiction under Art. 226 of the Constitution can sit as an Appellate Authority over the acts and deeds of the corporation and seek to correct them. That is not the function of the High Court under Article 226. Doctrine of fairness, evolved in administrative law was not supposed to covert the writ courts into appellate authorities over administrative authorities. The constraints-self-imposed undoubtedly- of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless.

In this case, the decision which the learned advocate for the petitioner has cited is distinguished in para No.13 by making following observations :

> 13. On behalf of the appellant reliance has been placed upon the decision of this court in Mahesh Chandra V. Regional Manager, U.P.Financial Corporation, (1992) 2 JT 326 : (1992 All L.J.1202). We have perused the decision. That was a case where the debtor was anxious to pay off the debt and had been taking several steps to discharge his obligation. On the facts of that particular case it was found that the corporation was acting reasonably. In that context certain observations were made. The decision also deals with the procedure to be adopted by the Corporation while selling the units taken over under S. 29. That aspect is not relevant in this case. We are therefore, of the opinion that the said decision is of no help to the appellant herein.

In my opinion, the said observations are applicable to

the facts before me.

7. In the instant case the Corporation had given ample opportunities, but even after he came before this court, My learned predecessor had given opportunities to the petitioner by asking the petitioner to make certain payments without prejudice to his right in order to show his bonafides and that in fact he is in a position to repay his dues, but he has not avail of the said opportunities. No doubt, the learned advocate for the petitioner was right when he contended that the material on record itself clearly shows that the valuation of the property in question as stated by the respondent No.1 in his affidavit in reply in para No.11 was of Rs.4.17 lacs, and, therefore, the sale price of the said property for Rs.2,61,111/= was not justified. But here it must be stated that the auction in question was by public advertisement issued on two occasions and no higher offer than what is received by the respondent No.1 had come. It is settled law that inadequacy of price fetched in auction sale will not vitiate it.It is also very pertinent to note that the petitioner is not offering any other higher offer or has not suggested that any other person is willing to purchase the property for higher price than what was offered. He himself is also not ready to offer the said price. Therefore, in the circumstances, the auction of the respondent No.1 could not be quashed and set aside for getting less price than what was valued by the valuer.

8. The action taken by respondent No.1 is quite fair as has been stated by the respondent No.1 in his affidavit and there is also proper compliance with the guidelines particularly guidelines Nos. 1,3 and 4 given by the Apex Court in the case of MAHESH CHANDRA V. REGIONAL MANAGER, U.P. FINANCIAL CORPORATION AND OTHERS (Supra). Therefore, in the circumstances, there is no reason to interfere with the administrative action of the respondent No.1 as has been held by the Apex Court in the case of KARNATAKA STATE FINANCIAL CORPORATION V MICRO CAST RUBBER & ALLIED PRODUCTS (P) LTD. & ORS.1996 (6) JT,37. It is very pertinent to note that there is no allegation by the petitioner that the action of respondent No.1 against him is mala fide one. Though the petitioner was given ample opportunities to overcome the situation which he is now facing, he has not avail of the said opportunities. Therefore, he cannot now ask the court to interfere with the administrative action of the respondent No.1 when he is neither alleging any mala fide on the part of the respondent No.1 or is not in a position to show any mala fide, consequently his petition

will have to be dismissed as has been laid down by the Apex Court in the case of U.P. FINANCIAL CORPORATION AND OTHERS V. NAINI OXYGEN & ACETYLENE GAS LTD AND ANOTHER 1995 (2) SUPREME COURT CASES, 754 wherein the following principles have been laid down.

> This is not a matter where the High Court should have stepped in and substituted its judgment for the judgment of the Corporation which should be deemed to know its interests better whatever the sympathies the Court had for the prosperity of the Company. If the situation was bad on the date of the impugned judgment, it has become worse today. To grant any indulgence to the Company at this stage will be askin to flogging a dead horse.
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> The Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and function and obligations to discharge. As such, in the discharge of its functions, it is free to act according to its own light. The views it forms and the decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own prospective and calculations. Unless its action is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however more prudent, commercial or businesslike it may be, for the decision of the Corporation, the same cannot be assailed for making the Corporation liable. In matters commercial, the courts should not risk their judgments for the judgments of the bodies to whom that task is assigned.

9. Therefore, in view of the aforesaid discussions, I hold that the present petition will have to be dismissed with costs. I accordingly dismiss the same. Petition is dismissed, but in the circumstances of the case, I direct the parties to bear their respective cost. The Civil Application No.3231 of 1996 filed by the petitioner also stands disposed off with no orders as to costs and the order of status quo passed in the same is vacated.

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